Filed 3/19/09 Chicago Title v. Metropolital Prop. Holdings CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

CHICAGO TITLE COMPANY, Plaintiff, v. METROPOLITAN PROPERTY HOLDINGS, LLC, Defendant and Appellant; STATE OF CALIFORNIA FRANCHISE TAX BOARD, Defendant and Respondent.	B206217 (Los Angeles County Super. Ct. No. BC359760)

APPEAL from a judgment of the Superior Court of Los Angeles County. Jane L. Johnson, Judge. Reversed.

Poindexter & Doutre, Inc., Jeffrey A. Kent and Joseph A. Sifferd for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, W. Dean Freeman, Felix E. Leatherwood, Herbert A. Levin, and Christine Zarifan, Deputy Attorneys General for Defendant and Respondent.

Metropolitan Property Holding, LLC (Metropolitan) appeals from a judgment entered following a court trial in an interpleader action filed by Chicago Title Company (Chicago Title). Chicago Title filed the action after it received competing demands for the balance of sale proceeds from a nonjudicial foreclosure sale of real property located at 2666-2668 Magnolia Avenue in Los Angeles (the property). After it was awarded its costs and fees, Chicago Title was discharged from the proceedings. Three other parties were also discharged, leaving only the competing claims of Metropolitan and the Franchise Tax Board (Board). Following trial, the court awarded the funds to the Board. We reverse.

FACTUAL BACKGROUND

In 1986, Kristin Belko (Belko) purchased the property, which is a four-unit apartment building. On February 19, 2004, Belko, who was then a Wyoming resident, and her father, John S. Belko, formed Metropolitan, a Wyoming close limited liability company. Metropolitan is registered to transact business and is in good standing in California.

On March 18, 2004, Belko executed a grant deed of the property to Metropolitan. She then instructed tenants to pay rent to Metropolitan, caused the liability insurer to change the insured to Metropolitan, and caused Metropolitan to pay the real estate taxes. Because Belko was living in Wyoming, she sent the deed to a friend to record it in Los Angeles. She did not discover for about one year that the deed had not been recorded. The deed was recorded on July 21, 2005.

The recorded deed was stamped with the following language:

> "THE GRANTORS AND THE GRANTEES IN THIS CONVEYANCE ARE COMPRISED OF THE SAME PARTIES WHO CONTINUE TO HOLD THE SAME PROPORTIONATE INTEREST IN THE PROPERTY, R & T 11923(d)."[1]

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[1] Belko testified at trial that this stamp was not on the deed when she signed it and she first became aware of the stamp during the litigation. However, the trial court did not find this testimony to be credible, thus for the purposes of this appeal Metropolitan assumes the stamp was on the deed when Belko signed it.

After the grant deed was recorded, Metropolitan received a notice of supplemental assessment, indicating a change of ownership date of July 21, 2005. On behalf of Metropolitan, Belko filed a "Change of Ownership Statement."

In June 2006, Chicago Title, as trustee, noticed a nonjudicial foreclosure sale on behalf of Wellington Associates, LLC (Wellington), the holder of a deed of trust on the property. Wellington acquired title to the property at the sale. The sale generated $691,958.52 over and above the amount required to pay the costs of sale and the obligation owed to Wellington. Pursuant to Civil Code section 2924j, Chicago Title gave notice to all parties with interests of record in the subject property of the excess sale proceeds and of the need to file a claim to such proceeds. Metropolitan, as owner, served Chicago Title with a claim for excess proceeds.

At the time of the sale, five separate notices of state tax lien against Belko had been recorded in the official records of Los Angeles County, California:

On January 23, 1997, the Board recorded a "Notice of State Tax Lien" against Belko in the amount of $10,222.84 for the 1994 tax year.

On June 27, 1997, the Board recorded a "Notice of State Tax Lien" against Belko in the amount of $39,266.41 for the 1988 tax year.

On March 8, 1999, the Board recorded a "Notice of State Tax Lien" against Belko in the amount of $17,021.07 for the 1995 and 1996 tax years.

On August 18, 1999, the Board recorded a "Notice of State Tax Lien" against Belko in the amount of $7,778.31 for the 1997 tax year.

On October 15, 2001, the Board recorded a "Notice of State Tax Lien" against Belko in the amount of $8,493.09 for the 1998 tax year.

In support of its demand for the excess proceeds, the Board served Chicago Title with a "Certificate of Tax Due and Delinquency," showing Belko's indebtedness to the Board for unpaid personal income tax in the amount of $145,086.64, secured by these five recorded notices.

The Board also served Chicago Title with an "Order to Withhold Personal Income Tax," to enforce Belko's remaining, unsecured personal tax liability of $539,204.02. The

order stated that it "attaches to all credits, personal property or other things of value in your possession belonging to KRISTIN BELKO." The order was for tax years 1986-1988, 1992, and 1994-1998. The Board had never filed liens for the claims of unpaid tax that were the subject of the order to withhold.

Restoration Consultants, LLC (Restoration) also filed a claim for excess proceeds to enforce its promissory note secured by a deed of trust in the amount of $300,000 from Metropolitan.

In light of these conflicting demands, Chicago Title filed the present action.

PROCEDURAL HISTORY

After Chicago Title filed its complaint in interpleader, Metropolitan, the Board, and other defendants filed answers. On May 29, 2007, the court signed a stipulation and order for distribution of deposited funds and dismissal of defendants Wellington, Restoration, and Belko. The stipulation provided that:

1. Chicago Title would receive funds in full payment of its claim for attorney fees and costs and would be dismissed from the action;

2. The Board would receive $157,907.52 of the funds in full payment of its five separate notices of state tax liens recorded on January 23, 1997, June 27, 1997, March 8, 1999, August 18, 1999 and October 15, 2001;

3. Restoration would receive $349,018.39 of the funds in full payment of its claim;

4. Wellington, Restoration, and Belko would be dismissed from the action without prejudice; and

5. The remainder of the funds would remain on deposit pending litigation of the competing claims between the Board and Metropolitan.

The trial took place on September 24, 2007. The court took all of the exhibits into evidence. Belko was the sole witness in a trial that lasted less than one hour.

On December 5, 2007, the court issued its decision in favor of the Board. The court acknowledged that the nonjudicial foreclosure sale was conducted in the name of Metropolitan, a Wyoming limited liability company in which Kristin Belko holds a 96.8

percent ownership interest.[2] The court explained that the Board's claim to the excess sale proceeds were based on unsecured tax claims against Belko. The court further explained that the Board "bases its claim on the July 21, 2005 deed recorded in the Los Angeles County Recorder's office, which conveyed the subject property from Belko to Metropolitan." The court pointed to the language stamped on the deed, indicating that the grantors and grantees were comprised of the same parties with the same ownership interest. The court framed the issue as whether "the recital on the deed is binding and conclusive on Metropolitan, or, in the alternative, an admission by Metropolitan, of the fact that Belko and Metropolitan are one and the same, such that [the Board] is entitled to the excess proceeds in payment of Belko's tax liability?"

The court answered this question in the affirmative. After explaining that it did not believe Belko's testimony that she was unaware of the language stamped on the deed, the court concluded: "Metropolitan is bound by the recitations on the publicly recorded document." Further, the court found that "the actions of the parties are consistent with the finding that Belko and Metropolitan are one and the same. Belko admitted that she did not pay a documentary transfer tax which is consistent with the recital on the deed that the conveyance did not result in a change of title. The fact that the property was ultimately reassessed is insufficient to overcome Belko's lack of credibility and the legal presumptions at play in this action." The trial court concluded that the remaining funds should be awarded to the Board.

Judgment for the Board was entered consistent with the court's decision. Metropolitan filed a timely notice of appeal.

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[2] The court stated that Belko held a 96.8 percent interest in Metropolitan. However, we note that Metropolitan states that "Ms. Belko's interest in units of Metropolitan was 95.4%."

DISCUSSION

I. Relevant law and standard of review

The Board's claim to the funds was based on Revenue and Taxation Code section 18670.5,[3] which allows the Board to collect tax liability through an order to withhold. Specifically, the statute allows the Board, "by notice, . . . [to] require any depository institution, . . . that [the Board], in its sole discretion, has reason to believe may have in its possession, or under its control, any credits or other personal property or other things of value, belonging to a taxpayer, to withhold . . . the amount of any tax, interest, or penalties due from the taxpayer . . . ." (§ 18670.5, subd. (a).) Under Civil Code section 2924k, subdivision (a)(4), the right to the sales proceeds of the property belonged to Metropolitan, as owner of the property at the time of the sale. However, the Board sought to withhold those proceeds from Metropolitan on the basis of personal tax liabilities of Belko. In concluding that the Board was entitled to withhold the funds under section 18670.5, the trial court made a determination that Metropolitan and Belko were "one and the same."

The trial court's determination that Metropolitan and Belko were "one and the same" presents a mixed question of law and fact for our review. First, the court interpreted the language of the grant deed, concluding that such language established that Metropolitan and Belko were the same taxpayer for the purposes of section 18670.5. The court treated the deed as creating a rebuttable presumption that Metropolitan and Belko were "one and the same," then proceeded to review the facts and determined that Metropolitan failed to rebut that presumption.

We review the court's legal reasoning de novo and the court's factual findings under the substantial evidence test. (*Kellogg v. Garcia* (2002) 102 Cal.App.4th 796, 802.)

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[3] All further statutory references are to the Revenue and Taxation Code unless otherwise noted.

II. The language of the deed does not establish that Metropolitan and Belko were one and the same

In interpreting the deed, we first look to the language of the deed as construed in light of any extrinsic evidence which may provide a meaning to which the language of the instrument is reasonably susceptible. (*City v. Union Pac. R.R. Co.* (1996) 50 Cal.App.4th 987, 994.) With deeds, as with all contracts, the primary object of interpretation is to ascertain and carry out the intention of the parties. Extrinsic evidence is admissible to interpret the instrument, but not to give it a meaning to which it is not susceptible. (*County of Solano v. Handlery* (2007) 155 Cal.App.4th 566, 573.)

The only language at issue is the stamp on the document indicating that:

> "THE GRANTORS AND THE GRANTEES IN THIS CONVEYANCE ARE COMPRISED OF THE SAME PARTIES WHO CONTINUE TO HOLD THE SAME PROPORTIONATE INTEREST IN THE PROPERTY, R & T 11923(d)."

We disagree with the trial court's conclusion that this language is an admission that the grantor (Belko) and the grantee (Metropolitan) were the same legal entity. In order to conclude that "the grantors and the grantees in this conveyance are . . . the same parties," the reader must ignore the words "comprised of." The words on the stamp, read together, convey that Belko and Metropolitan were separate entities that were *made up* of the same parties. The Board has presented no authority for the proposition that separate legal entities that are made up of the same parties may be treated as "one and the same" for the purposes of section 18670.5.

In addition, the stamp on the document references a statute, former section 11923, subdivision (d). This statute, now renumbered as 11923, subdivision (a)(4), is part of the statutory scheme governing the documentary transfer tax. (Stats. 2006, ch. 538, § 620.) A review of this statutory scheme is helpful to assist us in the goal of ascertaining the intent of the parties in including this language on the deed.

Section 11911, subdivision (a) permits the board of supervisors of any county or city and county to impose a tax on each "deed, instrument, or writing by which any lands,

tenements, or other realty sold within the county shall be granted, assigned, transferred, or otherwise conveyed . . . ." However, certain exemptions from this tax exist. Among these exemptions are those contained in section 11923, applicable where "the making, delivering or filing of conveyances" is being carried out "to make effective any plan of reorganization or adjustment." Under former section 11923, subdivision (d), the exemption applies under these circumstances and "[w]hereby a mere change in identity, form, or place of organization is effected."[4] Another exemption is found in section 11925, which concerns the transfer of partnership property. Section 11925, subdivision (d) exempts from the documentary transfer tax property transferred "between an individual or individuals and a legal entity or between legal entities that results solely in a change in the method of holding title to the realty and in which proportional ownership interests in the realty . . . remain the same immediately after the transfer."[5]

The Board cites no law suggesting that the application of any of the statutes describing exemptions to the documentary transfer tax (see §§ 11921 through 11930) should be applied outside of the specific statutory scheme of which they are a part. Nor

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[4] There is no evidence in the record, nor does any party argue, that Belko or Metropolitan were undergoing a plan of reorganization or adjustment as contemplated in section 11923 at the time that Belko deeded the property to Metropolitan. However, neither party makes any argument that the apparent mistaken citation to section 11923 on the deed undermined the transfer of the property.

[5] Metropolitan suggests that section 11925, subdivision (d), rather than section 11923, subdivision (d), is the statute that should have been referenced on the deed at issue. Metropolitan asked that we take judicial notice of a document captioned "Notice of Exempt Transactions Under the Documentary Transfer Tax," published by the County of Los Angeles Registrar-Recorder/County Clerk. We granted Metropolitan's request. The document prescribes certain statements which "must appear on the face of all documents to be recorded that are exempt from the [documentary transfer] tax." The statement which the County requires on documents exempt under section 11925, subdivision (d) mirrors verbatim the language stamped on the deed in question in this matter. Although the trial court did not address this issue, this supports Metropolitan's position that, despite a mistaken citation to section 11923, subdivision (d) rather than section 11925, subdivision (d), the intent of the parties in including the language at issue on the deed was to avoid the documentary transfer tax under section 11925, subdivision (d).

does the Board cite any authority for its position that the parties' reliance upon one of these exemptions to avoid the documentary transfer tax may be used to make a showing that the grantor and grantee in the transaction are "one and the same." Absent any law supporting such a conclusion, we decline to interpret Belko and Metropolitan's declaration that the real property transfer was exempt from the documentary transfer tax as signifying an intention to declare themselves "one and the same."

Metropolitan has directed us to an opinion of the Attorney General which supports the conclusion that while transactions exempt from the documentary transfer tax do not undergo a change of ownership, they do undergo a transfer from one legal entity to another. (82 Ops.Cal.Atty.Gen. 56 (1999).) The opinion addressed the following question: "Does the documentary transfer tax apply to the transfer of real property from a parent corporation to a wholly-owned subsidiary corporation?" (*Id*. at p. *1.) The opinion concluded: "The documentary transfer tax does not apply to the transfer of real property from a parent corporation to a wholly-owned subsidiary corporation when the beneficial ownership of the property remains the same." (*Ibid.*) In so concluding, the opinion explained: "Even though a corporation has a legal status distinct from its officers and shareholders [citations], the transfer of real property from a parent corporation to a wholly-owned subsidiary corporation is not considered a transfer of control for purposes of a 'change in ownership' and hence cannot be so considered for purposes of the [Documentary Transfer Tax] Act as 'realty sold.'" (*Id*. at p. *6.) Although the transaction at issue is not between a corporation and its wholly-owned subsidiary, we can draw parallels from this opinion. Belko, an individual member, has a legal status distinct from that of Metropolitan, a limited liability company. However, because she held 96.8 percent ownership of Metropolitan, she took the position at the time of the transfer that the beneficial ownership of the property had not changed for the purposes of the documentary transfer tax.

The recitation on the deed bound Metropolitan to the statement that Metropolitan and Belko were comprised of the same parties who continued to hold the same

proportionate interest in the property.[6] These words did not constitute an admission, nor create a presumption, that Metropolitan and Belko are the same taxpayer for the purposes of section 18670.5.

III. Substantial evidence did not support the court's factual finding that Belko and Metropolitan were one and the same

The trial court treated the deed as creating a presumption that Belko and Metropolitan were "one and the same." The court then reviewed the facts, concluding that "Metropolitan failed to come forward with any believable evidence that would overcome the presumptions, conclusive or otherwise, of the recitals on the recorded deed." Instead, the court found that "the actions of the parties are consistent with the finding that Belko and Metropolitan are one and the same. Belko admitted that she did not pay a documentary transfer tax which is consistent with the recital on the deed that the conveyance did not result in a change of title. The fact that the property was ultimately reassessed is insufficient to overcome Belko's lack of credibility and the legal presumptions at play in this action."

Belko's admission that no documentary transfer tax was paid does not constitute substantial evidence that Belko and Metropolitan were the same taxpayer for the purposes of section 18670.5. For the reasons set forth in section II of this opinion, distinct legal entities are permitted to avoid the documentary transfer tax when the underlying beneficial ownership of the real property does not change. Contrary to the trial court's conclusion, such a transfer does result in a change of title from one distinct legal entity to another. Failure to pay a documentary transfer tax does not constitute substantial evidence that the grantor and grantee are "one and the same."

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[6] The Board has set forth extensive authority for the proposition that recitations in a deed are binding upon the parties to the deed. We decline to address this authority because the issue before us is not whether the recitation in the deed was binding on the parties, but the proper interpretation and legal effect of that recitation.

The Board points to no other specific evidence supporting a factual conclusion that Belko and Metropolitan are the same party. The Board concedes that it has made no effort to make a showing of alter ego, therefore we do not address this issue.[7]

DISPOSITION

The judgment is reversed. Appellant is awarded its costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST

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[7] In this case, because the Board, as a third party creditor, seeks corporate assets to satisfy individual liabilities, the applicable doctrine would be "third party or 'outside' reverse piercing of the corporate veil, by which the corporate veil is pierced to permit a third party creditor to reach corporate assets to satisfy claims against an individual shareholder." (*Postal Instant Press, Inc. v. Kaswa Corp.* (2008) 162 Cal.App.4th 1510, 1513.) In a case of first impression in California, the *Postal Instant Press* court specifically declined to accept the doctrine of outside reverse piercing of the corporate veil as the law of this state. On August 27, 2008, the Supreme Court denied review of the decision.